

# EXHIBIT B

## Complaint

SCANNED

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20-2-00701-37  
CMP 3

Complaint  
8256040



FILED  
2020 MAY 29 AM 10:33

WHATCOM COUNTY  
WASHINGTON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR WHATCOM COUNTY

Plaintiffs:

SCOTT HILLIUS; TOM STAEHR;  
DANIEL AND SONJA LYONS;  
DOUGLAS AND ANGELIQUE  
SCARLETT; MARK MIEDEMA;  
MARK and CHERI HOLMES;  
STEVEN AND LISA ZEHR,

vs.

Defendants:

MAO HUA CHEN; 18 PARADISE  
LLP; MOUNT TAI INVESTMENT  
INC.; MOUNT EMEI INVESTMENT  
INC.; WILLIAM (MICK) O'BRYAN;  
JOSH WILLIAMS; MJ  
MANAGEMENT, LLC; and the CITY  
OF LYNDEN

No. 20 2 00701 37

COMPLAINT

JUDGE:

For their Complaint, Plaintiffs allege as follows:

**I. PARTIES**

1. Plaintiffs Scott Hillius ("Hillius") is a resident of Whatcom County and the owner of the property commonly known as 268 West Mayberry Drive, #202, Lynden, WA 98246 (the "Hillius Property"). The Hillius Property is subject to the CC&Rs (defined hereafter).

COMPLAINT: 1

ANDERSSON CROSS BORDER LAW CORPORATION  
1305 11TH STREET, SUITE 304  
BELLINGHAM, WA 98225  
TELEPHONE: (360) 768-1265

1           2.     Plaintiffs Tom Staehr ("Staehr") is a resident of Whatcom County and the  
2 owner of the property commonly known as 8858A Depot Road, Lynden, WA 98264 (the  
3 "Staehr Property"). The Staehr Property is subject to the CC&Rs.  
4

5           3.     Plaintiffs Daniel and Sonja Lyons, husband and wife, ("Lyons") are  
6 residents of Whatcom County and owners of the property commonly known as 300  
7 Homestead Blvd, Unit 101, Lynden, WA 98264 (the "Lyons Property"). The Lyons  
8 Property is subject to the CC&Rs.  
9

10          4.     Plaintiffs Douglas and Angelique Scarlett, husband and wife, are residents  
11 of Whatcom County and owners of the property commonly known as 815 Bentgrass  
12 Way, Lynden, WA 98264 (the "Scarlett Property"). The Scarlett Property is subject to  
13 the CC&Rs.  
14

15          5.     Plaintiffs Mark Miedema is a resident of Whatcom County and the owner  
16 of the property commonly known as 2040 Greenview Lane, Lynden, WA 98264 (the  
17 "Miedema Property"). The Miedema Property is subject to the CC&Rs.  
18

19          6.     Plaintiffs Mark and Cheri Holmes, husband and wife, ("Holmes") are  
20 residents of Whatcom County and owners of the property commonly known as 124 Twin  
21 Sister Loop, Lynden, WA 98264 (the "Holmes Property"). The Holmes Property is  
22 subject to the CC&Rs.  
23

24          7.     Plaintiffs Steven and Lisa Zehm, husband and wife, ("Zehm") are residents  
25 of Whatcom County and owners of the property commonly known as 1965 Emerald  
26 Way, Lynden, WA 98264 (the "Zehm Property"). The Zehm Property is subject to the  
27 CC&Rs.  
28

1           8. Defendant Mao Hua Chen, aka Morris Chen ("Chen") is an individual,  
2 resident in British Columbia, Canada.

3           9. Defendant 18 Paradise LLP ("Paradise") is a Washington limited liability  
4 partnership.  
5

6           10. Defendant Mount Emei Investment Inc. ("Mount Emei") is purported to be  
7 a Delaware Corporation and partner in Paradise.  
8

9           11. Defendant Mount Tai Investment Inc. ("Mount Tai") is purported to be a  
10 Delaware Corporation and partner in Paradise.

11           12. Paradise, Mount Emei, and Mount Tai are collectively referred to as the  
12 "Chen Affiliates".  
13

14           13. Defendant MJ Management, LLC ("MJ") is a Washington limited liability  
15 company.  
16

17           14. Defendant William (Mick) O'Bryan ("Mick") is and individual, resident in  
18 Whatcom County and a governor of MJ.

19           15. Defendant Josh Williams ("Josh") is an individual, resident in Whatcom  
20 County and a governor of MJ.  
21

22           16. Defendant City of Lynden (the "City") is a Washington State municipality.  
23 The City is named as a defendant only for purposes of the Declaratory Judgment Action  
24 pursuant to RCW 7.24.110, which requires that "all persons shall be made parties who  
25 have or claim any interest which would be affected by the declaration." No affirmative  
26 relief, costs, fees or other remedy is sought from the City.  
27  
28

**II. JURISDICTION AND VENUE**

17. This Court has personal and subject matter jurisdiction over the parties and claims in this action.

18. Venue for this action is appropriate in Whatcom County Superior Court pursuant to RCW Chapter 4.12.

**III. FACTUAL ALLEGATIONS**

**A. Background Facts.**

19. In the early 1990s, James Wynstra ("Wynstra") and his company Homestead Northwest, Inc. ("HNW") developed a plan for a new golf course (the "Golf Course") and surrounding residential development in Lynden, Washington.

20. HNW planned to develop the project as a Planned Residential Development ("PRD") under Chapter 19.29 of the Lynden Zoning Code. A PRD develops an entire neighborhood according to a systematic plan. The property for the proposed PRD consisted of approximately 250 acres, of which 140 were for the Golf Course and 110 were for residential development.

21. On June 24, 1992, HNW also recorded a document entitled "Master Declaration of Covenants, Conditions, Restrictions and Reservations for Homestead, a Planned Residential Development" (the "CC&Rs") with the Whatcom County Auditor.

22. On July 20, 1992, HNW and the City entered into a binding contract for the Homestead PRD (the "PRD Agreement").

23. The PRD Agreement required HNW to use the CC&Rs for all developments within the Homestead PRD.

1           24.    The PRD ordinance in effect when the PRD Agreement was signed  
2 requires the formation of a homeowners association. Specifically,

3           a.    Section 19.29.020 provided: "To preserve community facilities and open  
4 space, every PRD shall have a homeowner's association and agreements to  
5 fund such an organization."

6           b.    Section 19.29.080(B) provided: "Private streets are to be maintained by  
7 the PRD property owners through dues collected as part of a homeowner's  
8 association.  
9

10           c.   Section 19.29.080(F) provided: "Control of land area reserved for visitors  
11 must be maintained by the homeowners' association."  
12

13           d.   Section 19.29.090 provided: "A homeowner's association shall be formed  
14 as a part of the PRD."  
15

16           e.   Section 19.29.090(B) provided: "The homeowner's association may  
17 provide restrictive covenants and shall provide for homeowner's dues schedules  
18 for maintenance of common grounds and facilities."  
19

20           25.   Section 19.29.090(D) provided: "Privately owned land may be designated  
21 as common open space, if the owner of such privately owned land" "Provides assurance  
22 satisfactory to the Public Works Director that the open space will be maintained in  
23 perpetuity and will only be used for the purposes intended as a part of the PRD," and  
24 "Establish a formula for the assessment of maintenance dues by the homeowners and  
25 rules whereby the common land may be turned over to the homeowners."  
26  
27

28           26.   Paragraph 2.3 of the CC&Rs provides that Common Open Space is  
intended for the common use of all Parcel Owners in Homestead. Details of the

1 ownership, management, maintenance and phasing of the Common Open Space are  
2 described in Articles III and V of the CC&Rs.

3 27. Paragraph 2.3 concludes by stating: "The term 'Common Open Space' as  
4 used herein does not and shall not include the golf course, clubhouse, R.V. storage and  
5 maintenance areas. It includes only the property described on Exhibit B and any phased  
6 amendments thereto."  
7

8 28. Paragraph 1.3.5 defines a "Parcel" shall mean a record Lot or a  
9 Condominium Unit within the Property.  
10

11 29. Paragraph 1.3.7. defines "Owner" shall mean and refer to the record  
12 owner whether one or more persons or entities of fee simple title to any Lot or  
13 Condominium Unit which is part of the Property.  
14

15 30. HNW wanted to defer the formation of the HOA until the PRD was  
16 completely built out so that all Parcel Owners could participate in its formation and for  
17 efficiencies in completing the development of the PRD.  
18

19 31. The CC&Rs formally create the Homestead Owners Association ("HOA")  
20 as an unincorporated association until the common areas are conveyed by the  
21 Declarant.  
22

23 32. The City agreed that HNW could fill the role of the HOA until completion of  
24 the PRD, but did not waive the ordinance's requirement for an association of the  
25 owners.  
26

27 33. For these reasons, HNW included a provision in the CC&Rs stating that it  
28 would act as the homeowner association and turn the Common Open Space over to the  
HOA later.

1           34.    The City agreed to this procedure in the PRD Agreement.

2           35.    After the PRD Agreement was executed, HNW recorded a number of  
3 additional plats and condominiums within the PRD.

4  
5           36.    HNW also amended the Declaration to include other properties that were  
6 not part of the original PRD. Those properties are subject to the CC&Rs.

7           37.    HNW was forced to sell its interest in the Homestead PRD because of  
8 financial difficulties in 2010.

9  
10          38.    When HNW sold its interest in 2010, the build out of the PRD was not  
11 complete.

12          39.    After liquidating its other holdings, HNW sold the Golf Course and the  
13 balance of its interest in the PRD to Raspberry Ridge, LLC in 2010.

14  
15          40.    HNW also assigned its Declarant rights and responsibilities under the  
16 CC&Rs to Raspberry Ridge.

17          41.    The PRD development was complete not later than 2013.

18          42.    The PRD Agreement stated that when the PRD was complete, it would  
19 have approximately 8 acres of parks and Common Open Space.

20  
21          43.    The PRD as completed contains less than 9 acres of Common Open  
22 Space.

23          44.    In December 2013 Raspberry Ridge sold the Golf Course to Paradise.

24          45.    Raspberry Ridge assigned its rights and obligations under the CC&Rs to  
25 Paradise as part of the sale of the Golf Course.

26  
27          46.    Since assuming the Declarant's rights and obligations under the CC&Rs in  
28 2013, Paradise has failed to perform its obligations under the CC&Rs.



1           47.     Paradise has treated the Common Open Space maintenance fees  
2 ("Fees") as ordinary income of the Golf Course.

3           48.     In 2015, Paradise charged the Parcel Owners monthly Fees of \$30.00

4           49.     The total 2015 Fees for all Parcel Owners was over \$200,000, or over  
5 \$20,000 per acre of Common Open Space.  
6

7           50.     In a December 1, 2015 letter, Paradise unilaterally increased the Fees for  
8 2016 by \$1.50 per Parcel Owner per month to \$31.50. In that letter, Paradise stated that  
9 the increase was the "result of increased maintenance costs."  
10

11           51.     In a December 1, 2016 letter, Paradise announced a unilateral increase in  
12 the Fees for 2017 by \$1.58 per Parcel Owner per month to \$33.08. In that letter,  
13 Paradise stated that the increase was the "result of increased maintenance costs."  
14

15           52.     In a subsequent December 12, 2016 letter, Paradise clarified that the  
16 Fees would increase to \$33.00 for 2017, not \$33.08 and said that the increase was  
17 because of the Washington State increase in the minimum wage.  
18

19           53.     In a November 27, 2017 letter, Paradise announced that the Fees would  
20 increase to \$34.50 for 2018 and said that the increase was because of "rising costs of  
21 expenses and the increased minimum wage."  
22

23           54.     In a November 20, 2018 letter, Paradise announced that the Fees would  
24 increase to \$36.00 for 2019 and said that the increase was because of "rising costs of  
25 expenses and the increased minimum wage."  
26

27           55.     Paragraph 17 of the PRD Agreement provides that:

28           The covenants, conditions and restrictions submitted to the City and herein  
referred to will be placed in force upon the property covered by this plan and will  
not be altered or amended without the consent of the City.

1  
2 56. On July 1, 2019, Paradise unilaterally recorded a Sixth Amendment to the  
3 CC&Rs. The Sixth Amendment stated that Paradise “may impose on any and all Parcel  
4 Owners a special assessment for the purpose of funding improvements to the Common  
5 Open Space and/or maintaining a reserve fund for anticipated, extraordinary or  
6 unanticipated expenses for maintaining the Common Open Space.”  
7

8 57. Paragraph 3.3 of the CC&Rs states that “All costs and expenses of  
9 maintenance of and improvements to the Common Open Space shall be paid by the  
10 Declarant.” The Sixth Amendment contradicted the terms of the CC&Rs.  
11

12 58. Paradise did not obtain the consent of the City to its Sixth Amendment to  
13 the CC&Rs.  
14

15 59. On August 9, 2019, Paradise unilaterally imposed a special assessment  
16 (“Special Assessment”) of \$83.00 on every Parcel Owner purportedly to pay for repairs  
17 of storm damage.  
18

19 60. Plaintiffs and members of the proposed class paid the Special  
20 Assessment.  
21

22 61. The August 9, 2019 Special Assessment totaled over \$50,000.  
23

24 62. On December 4, 2019, Paradise unilaterally recorded a Seventh  
25 Amendment to the CC&Rs. The Seventh Amendment stated: “The failure to increase  
26 maintenance fees in one or more years does not waive the right to increase fees the  
27 following year up to the maximum combined amount for all years.”  
28

63. Paradise did not obtain the consent of the City to its Seventh Amendment  
to the CC&Rs.

1           64.    The Seventh Amendment did not modify the existing provision in the  
2 CC&Rs requiring the Declarant to give notice of any increase in the fee in December of  
3 the year before the increase would take effect.  
4

5           65.    The Seventh Amendment does not state that it was retroactive or affected  
6 vested rights.  
7

8           66.    The Seventh Amendment was not retroactive.  
9

10          67.    In a December 4, 2019 letter, Paradise announced that the Fees would  
11 increase to \$93.00 for 2020. In the letter, Paradise stated that the increases from 2016-  
12 2018 "have been inadequate in covering the bare minimum expenses required to  
13 maintain the common open space and cannot continue to operate at a deficit."  
14

15          68.    The notice explained that the increase represented a retroactive 5%  
16 annual increase to the initial \$25 fee every year back to 1993.  
17

18          69.    Under the \$93 monthly fee, Paradise would receive over \$650,000  
19 annually from the Parcel Owners.  
20

21          70.    When Parcel Owners complained about the increase, Paradise convened  
22 a series of meetings with Parcel Owners.  
23

24          71.    At one of those meetings, Paradise presented the Parcel Owners with a  
25 Homestead Farms Golf Club Joint Maintenance Fees Profit & Loss, January through  
26 December 2019 (the "P&L").  
27

28          72.    At the meetings, Paradise represented that the P&L was truthful and  
accurate.

          73.    According to the P&L, Paradise received \$253,946.91 in Fees and  
\$35,600.99 in Special Assessments in 2019 for total Fees of \$289,547.90.

1           74. According to the P&L, Paradise incurred expenses of \$346,065.93  
2 performing its duties under the CC&Rs, and incurred a loss of \$56,518.04 for the work.

3           75. Parcel Owners present at the meeting offered to relieve Paradise of that  
4 burden by accepting conveyance of the Common Open Space to the HOA and  
5 assuming responsibility for the work and expenses.  
6

7           76. Paradise rejected that offer.  
8

9           77. In truth, the amounts set forth on the P&L are false, and Paradise has  
10 earned a substantial profit from the Common Open Space Fees every year it has owned  
11 the Golf Course.  
12

13           78. Paradise increased the Fees to increase its profitability.

14           79. Paradise prepared and presented the P&L to justify an increase in the  
15 Fees from \$36.00 to \$93.00 per Parcel Owner per month commencing in January 2020.  
16

17           80. Paradise deliberately misrepresented the P&L with the intent to induce the  
18 Parcel Owners to pay the increased Fees.

19           81. Many Parcel Owners agreed to pay and have paid the \$93 annual monthly  
20 fee in reliance on the truth of Paradise's P&L.  
21

22           82. Paradise also presented the Parcel Owners with a 2020 Budget for the  
23 work required under the CC&Rs (the "Budget").

24           83. According to the Budget, Paradise expects to incur costs totaling  
25 \$652,095.00 performing its duties under the CC&Rs in 2020.  
26

27           84. According to the Budget, Paradise expects to receive \$656,027.00 in Fees  
28 in 2020.

1           85. In truth, the Budget falsely overstates the actual expenses expected by  
2 Paradise and includes expenses that will not be incurred at all.

3           86. Paradise prepared and presented the Budget to justify an increase in the  
4 Fees from \$36.00 to \$93.00 per Parcel Owner per month commencing in January 2020.  
5

6           87. Paradise deliberately misrepresented the Budget with the intent to induce  
7 the Parcel Owners to pay the increased Fees.  
8

9           88. Many Parcel Owners agreed to pay and have paid the \$93 monthly Fees  
10 in reliance on the truth of Paradise's Budget.

11           89. Many Parcel Owners are retirees on fixed incomes. The increased fee has  
12 caused financial hardship for many members of the proposed class.  
13

14           90. At meetings with the Parcel Owners, Paradise threatened to file liens  
15 against the title of any Parcel Owner who failed to pay the contrived Fees.  
16

17           91. Many Parcel Owners are afraid and intimidated by the conduct of  
18 Paradise.

19           92. The increases in the Fees have diminished the value of the Parcels.

20           93. Paradise also presented the Parcel Owners with a Summary of Storm  
21 Assessment Expenses ("Summary") for the Special Assessment in 2019.  
22

23           94. According to the Summary, Paradise spent \$50,993 on common areas in  
24 response to storms in 2018 and 2019.

25           95. Paradise in fact spent substantially less than \$50,993 on common areas in  
26 response to storms in 2018 and 2019.  
27

28           96. Paradise prepared and presented the Summary to justify its demands in  
the Special Assessment.

1           97.     Paradise deliberately misrepresented the storm costs with the intent to  
2 induce the Parcel Owners to agree to the Special Assessment.

3           98.     Paradise intends to retain ownership of the Homestead PRD common  
4 areas and continue to charge Homestead PRD owners increasingly excessive Fees in  
5 perpetuity.  
6

7                               **IV. CLASS ACTION ALLEGATIONS**  
8

9           99.     Plaintiffs bring this action on behalf of themselves and on behalf of a  
10 proposed class consisting of Parcel Owners subject to the CC&Rs (the "Class  
11 Members").

12           100.    The Class Members consists of over 600 Parcel Owners.

13           101.    It would be impractical at best to join all Class Members in a single action.

14           102.    The legal and factual issues in this action are identical with respect to  
15 each of the Class Members. Each of the Class Members were subject to exactly the  
16 same payment demands by defendants and affected in exactly the same way by  
17 defendants' conduct.  
18

19           103.    The claims of the named Plaintiffs are typical of claims of the Class  
20 Members. None of the named Plaintiffs has any different or additional claims against  
21 defendants.  
22

23           104.    The named Plaintiffs are personally and financially prepared to fairly and  
24 adequately represent the interests of the Class Members.  
25

26           105.    If the Class Members each brought their own actions, there would be a  
27 high risk of inconsistent adjudications of legally identical claims and/or res judicata or  
28 collateral estoppel effects of earlier cases on later ones.



1           106. The Court's determination of the merits of the claims of some of the  
2 members of the class would as a practical matter decide the merits of the claims of  
3 other members who did not participate in the action.  
4

5           107. The defendants have acted in exactly the same manner with respect to all  
6 Class Members. The Court should render a single decision applicable to all Class  
7 Members.  
8

9           108. The common questions between members of the class predominate over  
10 any potential differences. Potential differences primarily concern the period and  
11 resulting amount of damages, but all claims will be decided under the same standard.  
12

13           109. A significant portion of Class Members have already opted to participate in  
14 this class action and have requested class action certification.

15           110. The Court should certify this action as a class action pursuant to CR23.  
16

## 17                                   **V. CAUSES OF ACTION**

### 18           **A. Consumer Protection Act, RCW Chapter 19.86 Against Paradise**

19           111. Defendant Paradise performed the following unfair and/or deceptive acts  
20 and practices:  
21

- 22           a. Paradise collected Fees that were intended to be used to maintain and  
23           repair Homestead PRD common areas and used those Fees for its own  
24           benefit.
- 25           b. Paradise has treated the Fees as ordinary income of the golf course.
- 26           c. Paradise misrepresented the reason for the increase in the Fees in its  
27           December 1, 2015 letter.  
28

- d. Paradise misrepresented the reason for the increase in the Fees in its December 1, 2016 letter.
- e. Paradise misrepresented the reason for the increase in the Fees in its December 16, 2016 letter.
- f. Paradise misrepresented the reason for the increase in the Fees in its November 27, 2017 letter.
- g. Paradise misrepresented the reason for the increase in the Fees in its November 20, 2018 letter.
- h. Paradise purported to amend the Master Declaration with its 6th and 7th Amendments without first securing the required consent from the City.
- i. Paradise imposed a \$83.00 special assessment on Parcel Owners without legal authority to do so and based on misrepresentations of the grounds thereto.
- j. Paradise retroactively imposed increases in the Fees contrary to the vested rights of the Parcel Owners.
- k. Paradise misrepresented the reason for the increase in the Fees in its December 4, 2019 letter.
- l. Paradise falsely represented its actual profit and loss in the P&L.
- m. Paradise falsely represented its actual and anticipated expenses in the 2020 Budget.
- n. Paradise falsely represented its actual and anticipated expenses in the Summary of Storm Assessment Expenses.
- o. The above list is not inclusive or complete.



1           112. The conduct of Paradise alleged above constitutes unfair and deceptive  
2 acts or practices in violation of RCW 19.86.020.

3           113. Paradise committed the unfair and/or deceptive act and practices in the  
4 conduct of its business.

5           114. Violation of the Consumer Protection Act, RCW 19.86.020 committed by  
6 Paradise occurred in trade or commerce.

7           115. The unfair and/or deceptive act and practices set forth herein affected the  
8 public interest pursuant to RCW 19.86.093 because the injured hundreds of Parcel  
9 Owners and have the capacity to continue to injure hundreds more.

10           116. Plaintiffs and the of Class Members have been injured in their business or  
11 property as a proximate result of the unfair and/or deceptive acts and practices because  
12 they incurred financial losses in the amount of the payments made and because their  
13 properties lost value as a result of the increased Fees.

14           117. The unfair and/or deceptive acts and practices as alleged herein were the  
15 direct and proximate cause of the harm incurred by Plaintiffs and Class Members.

16           118. Plaintiffs and Class Members have incurred damages in an amount to be  
17 proven at trial.

18           119. Pursuant to RCW 19.86.090, Plaintiffs and Class Members are entitled to  
19 exemplary damages of three times their actual damages up to \$25,000 per violation.

20           120. Pursuant to RCW 19.86.090, Plaintiffs and Class Members are entitled to  
21 a permanent injunction prohibiting Paradise from continuing its unfair and/or deceptive  
22 acts or practices.

**B. Consumer Protection Act, RCW Chapter 19.86 Against Mao Hua Chen;  
Mount Tai Investment Inc.; and Mount Emei Investment Inc.**

121. As the partners of Paradise, Defendants Mount Tai and Mount Emei are liable for the violations of the Consumer Protection Act by Paradise.

122. As the shareholder of Mount Tai and Mount Emei Chen is liable for their violation of the Consumer Protection Act.

123. Chen, Mount Tai and Mount Emei are all liable for all damages awarded against Paradise under the Consumer Protection Act.

**C. Consumer Protection Act, RCW Chapter 19.86 Against Mick; Josh; and MJ**

124. Defendants Mick, Josh, and MJ performed the actions that constituted violations of the Consumer Protection Act.

125. Defendants Mick, Josh, and MJ are each personally liable for their conduct in violation of the Consumer Protection Act.

126. Defendants Mick and Josh are the members of MJ.

127. Defendants Mick and Josh are liable for MJ's violations of the Consumer Protection Act.

**D. Breach of Contract Against Paradise**

128. The Master Declaration constitutes a valid and enforceable contract between the Parcel Owners and the successor Declarant, Paradise.

129. The Master Declaration provides that "All costs and expenses of maintenance of and improvements to the Common Open Space shall be paid by the Declarant, its heirs, successors and assigns."

1           130. The Master Declaration provides that Declarant shall maintain the  
2 Common Open Space to a high standard.

3           131. The Master Declaration provides that Parcel Owners shall pay a monthly  
4 fee "so that the Common Open Space may be properly managed and maintained" and  
5 that "payments for costs and expenses shall be funded by joint maintenance fees  
6 provided by Parcel Owners other than the Declarant."  
7

8           132. The Master Declaration provides that the "Homestead Owners  
9 Association" (HOA) was created upon recordation.  
10

11           133. The Master Declaration provides that the HOA "shall operate in advisory  
12 capacity" to the Declarant until the Declarant conveys the Common Open Space to the  
13 HOA.  
14

15           134. The Master Declaration provides that upon conveyance of the Common  
16 Open Space to the HOA, "the total Assessment shall be equal to monies reasonably  
17 necessary to manage, maintain, and improve the common open space and to pay for  
18 the utilities, taxes, insurance, and administrative expenses of the Association," and that  
19 "each parcel shall bear an equal share of such Assessments."  
20

21           135. The Master Declaration provides that the Common Open Space in  
22 Maberry 1 was "TRACT A" AS IT APPEARS ON THE FACE OF MABERRY PLAT."  
23

24           136. Said Tract A is an irregular parcel of 276,520 square feet or 6.35 acres.  
25 Tract A is an unimproved track containing trees, areas of rough grass, a hiking trail, and  
26 Fish Trap Creek. Tract A is not and never has been used for any purpose other than  
27 hiking, protection of Fish Trap Creek, and a buffer from the Golf Course.  
28

1           137. On October 26, 1992, HNW amended the Declaration to expand the  
2 Common Open Space to include areas so designated in existing or future plats within a  
3 specified area.  
4

5           138. On May 6, 1994, HNW amended the Declaration to expand the Common  
6 Open Space to include areas so designated in existing or future plats within a specified  
7 area.  
8

9           139. On June 14, 1994, HNW amended the Declaration to expand the  
10 Common Open Space to include designated portions of the HOMESTEAD SOUTH  
11 PHASE I ALTERED PLAT OF JANSEN'S TOWN & COUNTRY ESTATES DIVISION  
12 NO. 1 and the PLAT OF JANSEN'S TOWN & COUNTRY ESTATES, DIVISION NO. 2.  
13 The added areas were not part of the Homestead PRD.  
14

15           140. On June 21, 1995, HNW amended the Declaration to expand the  
16 Common Open Space to include areas so designated in existing or future plats within a  
17 specified area.  
18

19           141. The intention of the parties to the Master Declaration was for HNW to  
20 have the rights and obligations of the future HOA.  
21

22           142. The initial \$25 monthly homeowner Fees was a good faith estimate of the  
23 anticipated cost for HNW to maintain Tract A in Maberry 1 with contributions from the 33  
24 parcels in Maberry 1.  
25

26           143. The Declaration requires that the Fees be spent on the maintenance of  
27 the Common Open Space.  
28

1           144. The increases in the Fees provided for in the Master Declaration were  
2 intended to be exercised only if and to the extent that the actual cost of maintenance  
3 exceeded the Fees.  
4

5           145. Following its acquisition of the Declarant interest under the Master  
6 Declaration, Paradise has treated the Fees as income.  
7

8           146. Paradise has failed to perform its duty to maintain the Common Open  
9 Space.  
10

11           147. Paradise has increased the monthly Fees to increase its profits, and not  
12 because the cost of maintenance exceeded the Fees.  
13

14           148. Paradise issued a Special Assessment in 2019 to cover unanticipated  
15 costs relating to storm damage.  
16

17           149. The Master Declaration provides that the Declarant is responsible for the  
18 cost of maintenance and the Special Assessment was contrary to the terms of the  
19 Master Declaration.  
20

21           150. Every contract carries with it an implied duty to act in good faith which  
22 obligates parties to cooperate with each other so that each may obtain the full benefit of  
23 performance.  
24

25           151. Paradise has breached the express terms of the Master Declaration, the  
26 intent as expressed by the parties, and the implied covenant of good faith.  
27

28           152. Plaintiffs and Class Members have been damaged in an amount to be  
proven at trial.

**E. Express and Constructive Trust Against Paradise**

153. Pursuant to the terms of the Master Declaration, the Declarant was to retain fee ownership of the Common Open Space for the benefit of the Parcel Owners.

154. Pursuant to the terms of the Master Declaration, the Common Open Space was “intended for the common use of all property owners in Homestead.”

155. Pursuant to Section 19.29.090(D) of the Lynden PRD ordinance, privately owned land in a PRD may be common space only if it will “be maintained in perpetuity and will only be used for the purposes intended as a part of the PRD.”

156. The Declarant therefore had ownership of the Common Open Space with a perpetual duty to maintain and a prohibition against other uses.

157. The Master Declaration creates a trust relationship in which the Declaration would retain ownership of the Common Open Space in trust for the Parcel Owners.

158. As trustee, the Declarant owes the Parcel Owners fiduciary duties.

159. Paradise has violated its fiduciary duties with self-dealing, conflicts of interest, failure to perform duties, and dishonesty.

160. The Court should rule that Paradise holds the Common Open Space in trust for the Parcel Owners, award Parcel Owners damages in an amount to be proven, and order Paradise to relinquish and convey the trust property to the HOA in accordance with the CC&Rs.

**F. Federal Civil RICO, 18 U.S.C. 3 1962(c) Against Chen, Chen Affiliates, MJ, Mick and Josh**

161. Plaintiffs bring this action under 18 U.S.C. 1962(c) (“RICO”).

1           162. Defendants, Chen, Chen Affiliates, MJ, Mick and Josh violated RICO and  
2 Plaintiffs and the Class Members were injured as a result.

3           163. Each Defendant is a "person" capable of holding legal or beneficial  
4 interest in property within the meaning of 18 U.S.C. § 1961(3).  
5

6           164. The Enterprise. Defendants form an association-in-fact for the common  
7 and continuing the purpose described herein and constitute an enterprise within the  
8 meaning of 18 U.S.C. §1961(4) that engaged in the conduct of their affairs through a  
9 continuing pattern of racketeering activity. The members of the enterprise functioned as  
10 a continuing unit with an ascertainable structure separate and distinct from that of the  
11 conduct of the pattern of racketeering activity. There may also be other members of the  
12 enterprise who are unknown or unnamed at this time.  
13  
14

15           165. The enterprise has engaged in, and their activities have affected,  
16 interstate and foreign commerce.  
17

18           166. Pattern of Racketeering Activity. Defendants, each of whom are persons  
19 associated with, or employed by, the enterprise, did knowingly, willfully and unlawfully  
20 conduct or participate, directly or indirectly, in the affairs of the enterprise through a  
21 pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(1), 1961(3), and  
22 1962(c). The racketeering activity was made possible by Defendants' regular and  
23 repeated use of the facilities and services of the enterprise. Defendants had the specific  
24 intent to engage in the substantive RICO violation alleged herein.  
25  
26

27           167. Predicate acts of racketeering activity are acts which are indictable under  
28 provisions of the U.S. Code enumerated in 18 U.S.C. § 1961(I)(B), as more specifically



1 alleged below. Defendants each committed at least two such acts or else aided and  
2 abetted such acts.

3 168. The acts of racketeering were not isolated, but rather the acts of  
4 Defendants were related in that they had the same or similar purpose and result,  
5 participants, victims and method of commission. Further, the acts of racketeering by  
6 Defendants have been continuous. There was repeated conduct during a period of time  
7 beginning in approximately 2013 and continuing to the present, and there is a continued  
8 threat of repetition of such conduct.  
9

10 169. The association-in-fact enterprise and the alternative enterprises, as  
11 alleged herein, were not limited to the predicate acts and extended beyond the  
12 racketeering activity. Rather, they existed separate and apart from the pattern of  
13 racketeering activity for the legitimate business purpose of operating a golf course and  
14 related amenities. Defendants have had and do have, upon information and belief,  
15 legitimate business plans outside of the pattern of racketeering activity.  
16

17 170. Plaintiffs specifically alleges that Defendants participated in the operation  
18 and management of the association-in-fact enterprise and the alternative enterprises by  
19 overseeing and coordinating the commission of multiple acts of racketeering as  
20 described below.  
21

22 171. 101. Predicate Act: Use of Mails and Wires to Defraud Plaintiffs in  
23 Violation of 18 U.S.C. 1341 and 1343. Defendants committed acts constituting  
24 indictable offenses under 18 U.S.C. 1341 and 1343 in that they devised or intended to  
25 devise a scheme or artifice to defraud Plaintiffs or to obtain money from Plaintiffs by  
26 means of false or fraudulent pretenses, representations or promises. For the purpose of  
27  
28



1 executing their scheme or artifice, Defendants caused delivery of various documents  
2 and things by the U S . mails or by private or commercial interstate carriers, or received  
3 such therefrom. Defendants also transmitted or caused to be transmitted by means of  
4 wire communications in interstate and foreign commerce various writings, signs and  
5 signals. The acts of Defendants set forth above were done with knowledge that the use  
6 of the mails or wires would follow in the ordinary course of business. or that such use  
7 could have been foreseen, even if not actually intended. These acts were done  
8 intentionally and knowingly with the specific intent to advance Defendants' scheme or  
9 artifice.

12 172. Defendants carried out their scheme in different states and countries and  
13 could not have done so unless they used the U.S. mails or private or commercial  
14 interstate carriers or interstate wires. Specifically, Defendants used wire and/or U.S.  
15 mail or private or commercial carriers to create and record the 6th and 7th amendments  
16 to the Master Declaration, to notify Plaintiffs of increased fees and special assessments,  
17 and to receive payment of the same.

20 173. Defendants' shared objective was, and is, to divert funds to their own  
21 benefit and to facilitate the continuation of the wrongful demands for payment.

23 174. Continuity of Conduct. Defendants' violations of state and federal law as  
24 set forth herein, each of which directly and proximately injured Plaintiffs and other Class  
25 Members, constituted a continuous course of conduct spanning a period from  
26 approximately 2013 to the present, and was intended to obtain money through false  
27 representations, fraud, deceit, and other improper and unlawful means. Therefore, said  
28

1 violations were a part of a pattern of racketeering activity under 18 U.S.C. 1961(l) and  
2 (5).

3 175. Upon information and belief, Defendants have conducted and/or  
4 participated, directly and/or indirectly, in the conduct of the affairs of the alleged  
5 enterprises through a pattern of racketeering activity as defined herein in violation of 18  
6 U.S.C. 1962(c).

7 176. The unlawful actions of Defendants, and each of them, have directly,  
8 illegally, and proximately caused and continue to cause injuries to Plaintiffs in their  
9 property and business. Plaintiffs seek an award of damages in compensation for,  
10 among other things, the amounts Defendants stole from them.

11 177. Plaintiffs accordingly seek an award of three times the damages they  
12 sustained.

13 178. Plaintiffs further seek recovery of reasonable attorneys' fees and costs of  
14 investigation and litigation, as well as any other relief as authorized by statute.

15 **G. Declaratory Judgment**

16 179. Plaintiffs and Class Members are persons interested under the PRD  
17 Agreement originally between HNW and the City.

18 180. As the Successor Declarant, Paradise is a part of the PRD Agreement and  
19 bound by its terms.

20 181. Pursuant to the PRD Ordinance in effect when the PRD Agreement was  
21 executed, the PRD Agreement applies to Plaintiffs and Class Members.

1 182. A justiciable controversy exists between Plaintiffs and Paradise regarding  
2 the requirement for formation of a homeowners association and the right of Paradise to  
3 retain ownership of the Common Open Space for its own benefit.  
4

5 183. Section 19.29.020 of the PRD Ordinance provides that “every PRD shall  
6 have a homeowner’s association and agreements to fund such an organization.”  
7

8 184. Section 19.29.090 of the PRD Ordinance provides that “A homeowner’s  
9 association shall be formed as a part of the PRD.”  
10

11 185. The City approved HNW’s retention of the Common Open Space during  
12 completion of the Homestead PRD but did not exempt HNW from the requirement to  
13 form and help organize the HOA.

14 186. The Court should enter judgment declaring that the PRD Agreement and  
15 the PRD Ordinance require Paradise to convey the Common Open Space to the HOA.  
16

17 187. The Court should further enter judgment declaring that the Homestead  
18 PRD is complete and that Paradise is now required to assist in the organization of the  
19 HOA and to convey the Common Open Space to the HOA.  
20

## 21 **VI. RELIEF REQUESTED**

22 Based upon the foregoing, Plaintiffs requests this Court enter judgment as follows:

- 23 1. Awarding Plaintiffs and the Class Members damages in an amount to be  
24 proven;
- 25 2. Entering a permanent injunction enjoining the Defendants from further  
26 violation of the Consumer Protection Act;
- 27 3. Awarding treble damages pursuant to RCW 19.86.090 and RICO;  
28

4. Awarding reasonable attorneys' fees and costs of investigation and litigation, as well as any other relief as authorized by statute.
5. Imposing a constructive trust on the assets of Defendants in the amount of the judgment;
6. Entering a declaratory judgment: (1) declaring the PRD Agreement in full force and effect; (2) declaring the 6th and 7th Amendments to the CC&Rs void; (3) declaring that the CC&Rs require Paradise to assist in the organization of the HOA and to convey the Common Open Space to the HOA, and ordering Paradise to do so; and
7. Awarding such additional relief as may be warranted.

DATED this 4th day of May, 2020

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